

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.923 OF 1998

Sampada Sahakari Bank Limited	Appellant
versus	
M/s.Inter Equipment (India)	
Private Ltd. and another	Respondents

Mr.S.M.Gorwadkar for appellant.
Mr.R.S.Apte with N.R.Bubna for respondent no.2.

CORAM : A.S.OKA, J.

DATE : 22nd March 2007

PC :

1. I have heard Shri Gorwadkar appearing for the appellant. When this appeal was called on 14th and 16th March 2007 none appeared for the first respondent. Today, when the appeal is called out, none appears for the first respondent.

2. The appellant-original first defendant has taken exception to the judgement and order dated 15th June 1998 passed by the learned Judge of the City Civil Court, Mumbai. By the said order, a Notice of Motion taken out by the first respondent has been made absolute by granting

temporary injunction against the appellant.

3. With a view to appreciate the submissions made by the learned advocate for the appellant, it will be necessary to refer to the facts of the case in brief. The first respondent is the original plaintiff and the second respondent is the original second defendant. The first respondent is a private limited company. According to the case of the first respondent, there are certain awards passed in favour of the appellant under section 91 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the said Act"). The prayer in the suit is that the Articles, Fixtures, Furniture, Appliances lying and being at 206/B, "Arcadia", 2nd Floor, Nariman Point, Mumbai 400 021 or at 232, Maker Towers, B-Wing, Cuffe Parade, Mumbai 400 005 or at any part thereof belonging to the first respondent or its Chairman and Director one Shri Nandu Chhabria is not liable to be attached in execution and implementation of the awards passed by the Co-operative Court in favour of the appellant in various disputes mentioned therein. The second respondent has been appointed as Special Recovery Officer under section 156 of the said Act for

recovery of the amounts payable to the appellant. The appellant has obtained various awards from the Co-operative Court against various firms and its' partners who are members of Chhabria Family.

4. Shri Gorwadkar appearing for the appellant submitted that the suit was not maintainable as notice under section 164 of the said Act was not served before institution of the suit. He submitted that even assuming that the immovable property of the first respondent was illegally attached in execution, a remedy was available to the first respondent to get the attachment vacated. He submitted that apart from the fact that the suit was not maintainable, the order impugned is patently illegal.

5. I have considered the submissions. Rule 107 of the Maharashtra Co-operative Societies Rules, 1961 contains elaborate provisions regarding attachment and sale of the property under the provisions of Section 156 of the said Act, at the instance of a creditor holding a decree. Under Sub Rule 19(a) of Rule 107, a claim preferred or any objection raised to attachment of any property is required to be investigated and disposed of by the Sale Officer on its own

merits. Clause (b) of Sub Rule 19 of Rule 107 provides that where the property to which the claim or objection relates has been advertised for sale, the Sale Officer may postpone the sale pending the investigation of the claim or objection. Clause (c) of Sub Rule 19 of Rule 107 provides that where a claim or an objection is preferred by the party against whom an order is made, may institute a suit to establish the right which he claims to the property in dispute, but subject to the result of such suit, if any, the order shall be final. There are other provisions in various sub rules of Rule 107 under which an aggrieved party can apply for setting aside the sale of the attached property. Thus, the said Rules of 1961 and more particularly Rule 107 is a complete code in itself. The learned Judge has granted temporary injunction only on the ground that there is no provision for issuing a show cause notice in the execution proceedings and there is no provision for investigating the claim or objection raised to the attachment before actually removing the movables from the possession of the first respondent.

6. As under the said Rules, a remedy was provided to the person aggrieved by the

attachment and as there is elaborate provision for making investigation as regards title of the objector to the attached property, the Civil Court ought not to have granted the injunction.

7. Apart from this fact, prima facie, the suit was not maintainable as notice under section 164 of the said Act was not served by the first respondent before instituting the suit. Apart from this fact, a remedy was available to the first respondent to raise an objection to the action of attachment by the Special Recovery Officer at the instance of the appellant.

8. The entire approach of the learned Trial Judge is erroneous and in fact no prima facie case was made out to grant temporary injunction. Hence, the appeal must succeed and I pass following order.

9. ORDER :-

(a) The impugned judgement and order dated 15th June 1998 is quashed and set aside and Notice of Motion No.2890 of 1996 stands dismissed;

(b) There shall be no orders as to costs.

MST

((-6-))

(A.S.0KA, J.)